



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/053,346	04/01/98	ROGONE	M 18661-000100

DAVID W. HEID
SKJERVEN, MORRILL, MACPHERSON
FRANKLIN & FRIED LLP
25 METRO DRIVE, SUITE 700
SAN JOSE, CA 95110

QM12/0107

EXAMINER

KEARNEY, R

ART UNIT

PAPER NUMBER

3739

DATE MAILED:

01/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/053 346

Applicant(s)

Rogers et al.

Examiner

Hearney

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10-19-99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-17, 21-23 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-17, 21-23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3739

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9-14, 16, 17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hogan. Hogan discloses a thermal and moisture barrier including a flexible cover (20), at least one opening (24) including a self-acting diaphragm closing. **Regarding claim 6** Figure 3 illustrates a rectangular sheet pivotally coupled by a flexible seam at its edges to flap portions. The flap portions are clearly illustrated as overhanging a support framework (22). **Regarding claims 6 and 16** see Figure 1. **Regarding claim 10** (22) illustrates a side panel surrounding a mattress (12) and cover (20) clearly overhangs the side panel. **Regarding claim 17** Figure 3 illustrates an edge of the cover (20) creating a seal with the mattress (22).

Art Unit: 3739

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hogan.

Hogan explicitly teaches all of the limitations of the claims except the cover defining a half section of a truncated right circular cylinder enclosure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the Hogan of a shape that defines a truncated right circular cylinder enclosure since a simple redesign modifying the shape of a preexisting apparatus only involves routine skill in the art.

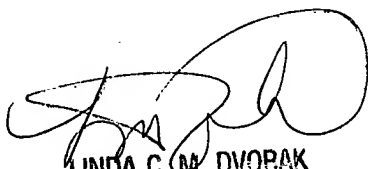
Response to Arguments

5. Applicant's arguments with respect to claims 1, 10 and 17 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland Kearney whose telephone number is (703) 308-2711. The examiner can normally be reached on Mondays through Fridays from 9:00 AM to 4:00 PM.

Art Unit: 3739

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700

RK

December 28, 1999